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October 20, 2017

Via ECF & FedEx Overnight Delivery:

The Honorable Kenneth M. Karas United States District Court for the Southern District of New York 300 Quarropas Street White Plains, New York 10601

Re: Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK

Dear Judge Karas:

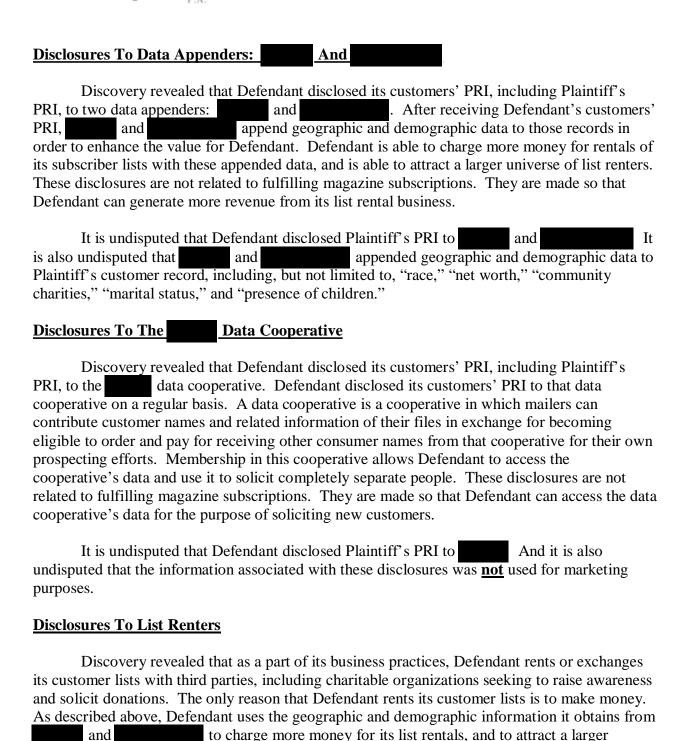
I write on behalf of Plaintiff Don Ruppel ("Plaintiff") pursuant to Rule II.A of Your Honor's Individual Practices, to request a premotion conference regarding Plaintiff's anticipated Motion For Partial Summary Judgment.

This case is identical to *Boelter v. Hearst Communications, Inc.*, -- F. Supp. 3d --, 2017 WL 3994934 (S.D.N.Y. Sept. 7, 2017) (Torres, J.) [hereinafter *Hearst*] where Judge Torres granted the plaintiff's motion for partial summary judgment on a claim under the Michigan Preservation Of Personal Privacy Act, M.C.L. §§ 445.1711, *et seq.* (the "PPPA") arising from Hearst's disclosures of her Personal Reading Information to a data appender and a data cooperative.

Phase I discovery revealed that Defendant Consumers Union of United States, Inc. ("Defendant") disclosed Plaintiff's magazine subscription records, including his name, address, and the magazine titles he purchased (his Personal Reading Information, or "PRI") to at least 3 third parties, including two data appenders and a data cooperative, who acted as a "middleman" to sell or trade that information to additional third parties. Phase I discovery also revealed that Defendant rented and disclosed Plaintiff's PRI to 16 different third parties, including charitable organizations. Given the very narrow limitations the Court imposed on Phase I discovery, these disclosures are likely just the tip of the iceberg. The record amassed during Phase I discovery confirms that Defendant established a sophisticated network of third-party data-mining companies to store and transmit its subscribers' PRI to anyone that would pay for it. Defendant did this on a routine, automated basis, for all subscribers, for years. And Defendant did this without regard to its obligations under the PPPA.

The disclosures Plaintiff challenges fall into three categories: (i) disclosures to data appenders; (ii) disclosures to a data cooperative; and (iii) rentals to third parties, including charitable organizations.

universe of list renters.



It is undisputed that Defendant rented Plaintiff's PRI to 16 different third parties since 2013, including to charitable organizations such as the Veterans of Foreign Wars.

There Is No Genuine Dispute With Respect To Any Fact Material To Establishing The Four Elements Of A Violation Of The PPPA

To establish his claim under the PPPA, Plaintiff must prove four elements:

- (1) Defendant is engaged in the business of selling magazines at retail;
- (2) Plaintiff purchased the magazines from Defendant;
- (3) Defendant disclosed a record or information concerning Plaintiff's purchase of the magazines; and
- (4) The disclosed record or information indicated Plaintiff's identity.

Hearst, 2017 WL 3994934, at *20 (citing Michigan Non-Standard Jury Instr. Civil § 32:10 (Aug. 2016)); *see also* M.C.L. § 445.1712. Plaintiff's proof of each of these four elements is uncontroverted.

<u>First</u>, it is undisputed that Defendant is engaged in the business of selling magazine subscriptions at retail. And it is undisputed that Defendant sells magazine subscriptions directly to its subscribers, and sold magazine subscriptions directly to the Plaintiff.

<u>Second</u>, it is undisputed that Plaintiff purchased subscriptions to *Consumer Reports* magazine directly from Defendant.

Third, undisputed evidence confirms that Defendant disclosed records or information concerning Plaintiff's purchases of magazine subscriptions to and 16 other third parties.

Fourth, it is undisputed that the disclosures to the first parties indicated Plaintiff's identity. Plaintiff's name and address were contained in all of these PRI disclosures.

As in *Hearst*, Plaintiff is entitled to partial summary judgment on his PPPA claim, and is entitled to \$5,000 statutory damages as a result. *See* M.C.L. § 445.1715.

Very truly yours,

hott D. Burros

Scott A. Bursor

CC: All counsel of record (via ECF & Email)